

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LILLIAN N. (BALDWIN) GRAHAM and U.S. POSTAL SERVICE,
OCEAN VIEW POST OFFICE, Ocean View, NJ

*Docket No. 99-1979; Submitted on the Record;
Issued October 11, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On August 6, 1997 appellant, then a 71-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 15, 1997 she suffered an acute anxiety attack caused by 45 minutes of berating by an employing establishment postmaster.¹ Appellant stopped work on July 15, 1997 and has not returned to work.²

On July 21, 1997 appellant filed a claim for an occupational disease (Form CA-2) for the July 15, 1997 injury.

By letter dated October 7, 1997, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish her claim. The Office advised appellant to submit additional factual and medical evidence supportive of her claim. In this same letter, the Office advised the employing establishment to submit factual evidence regarding appellant's claim.

¹ An employing establishment internal memorandum regarding a telephone conversation he had with Mr. Martino, an employing establishment customer. This memorandum revealed that appellant hit oil and trash cans while on a street delivering mail. Oil spilled out into the street and over the front of appellant's vehicle. Appellant drove up Mr. Martino's new driveway dripping oil. Mr. Martino complained about what happened and appellant's nasty behavior towards his wife in the house.

² By letter dated October 1, 1998, appellant was removed from the employing establishment effective November 13, 1998 on the grounds that she was charged with absence without official leave.

In a February 5, 1998 decision, the Office found the evidence of record insufficient to establish that appellant sustained an emotional condition arose in the performance of duty. By letter dated February 11, 1998, appellant, through her counsel, requested an oral hearing before an Office representative.

By decision dated March 17, 1999, the hearing representative affirmed the Office's decision.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the coverage of the Act. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned work duties or requirements of the employment, the disability comes within the coverage of the Act. On the other hand, where disability results from such factors as an employee's emotional reaction to employment matters unrelated to the employee's regular or specially assigned work duties or requirements of the employment, the disability is generally regarded as not arising out of and in the course of employment and does not fall within the scope of coverage of the Act.³

Perceptions and feelings alone are not compensable. Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by factors of her federal employment.⁴ To establish her claim that she sustained an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; (2) medical evidence establishing that she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.⁵

In the present case, appellant has primarily attributed her emotional condition to a meeting she had on July 15, 1997 with Postmaster Luis A. Denafó who allegedly berated her for 45 minutes about a minor motor vehicle accident and other unrelated items.

In response to appellant's allegation, Postmaster Denafó submitted a July 15, 1997 narrative statement noting that, on that date, he had a discussion with appellant about the July 11, 1997 accident, which she did not report. He stated that he asked appellant to explain what happened. Postmaster Denafó further stated that he discussed the policy on reporting an accident to the Postmaster. He mentioned that Mr. Martino was very upset that she drove her vehicle up his driveway with oil spilling all over it. Postmaster Denafó then stated that he discussed the proper way to deliver the mail in that situation, the possible costs and third-party tort claim that Mr. Martino considered filing. He discussed Mrs. Martino's reaction when appellant became

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Pamela R. Rice*, 38 ECAB 838 (1987).

⁵ *Donna Faye Cardwell*, 41 ECAB 730 (1990).

loud with her about the situation. Postmaster Denafó noted that he showed appellant pictures he had taken on the date of the accident during his investigation. He questioned appellant about the accident. Postmaster Denafó noted that appellant became upset and left his office. He further noted that appellant returned minutes later to say that she was not feeling well and that she had to leave. Postmaster Denafó noted:

“I feel the stress occurred when I talked to her about not reporting the accident. She had no intention on reporting the accident on July 11, 1997. My feeling is she was not stressed when the accident happened on July 11, 1997. She completed her route and on Saturday she worked her route. The stress was when I questioned her on Tuesday July 15, 1997 because of her not reporting the accident on July 11, 1997.”

Appellant submitted an undated narrative statement from Jack Gresham, appellant’s relative, revealing that he received a telephone call from appellant’s son on July 15, 1997 asking him to take appellant to a doctor because she was not feeling well. He described appellant’s emotional and physical condition and stated that he took her to Dr. Denay L. Marino, a family practitioner and treating physician, who diagnosed an acute anxiety attack. Mr. Gresham did not indicate that he knew the reason why appellant had the acute anxiety attack.

Appellant also submitted an undated narrative statement from Frank K. Smith, appellant’s son and coworker, indicating that he was present when Postmaster Denafó summoned appellant into his office on July 15, 1997. Mr. Smith stated that appellant returned from Postmaster Denafó’s office visibly upset. He then stated that after appellant’s request to leave work, Postmaster Denafó seemed perturbed and agitated when he again summoned appellant to his office. Mr. Smith then stated that, 10 minutes later appellant came out of Postmaster Denafó’s office crying and she seemed incoherent. He stated that appellant told him that she had to get out of the office and that he tried to calm her down in a garage. Mr. Smith then stated that he told Postmaster Denafó to leave them alone when he came into the garage. Mr. Smith commented that Postmaster Denafó shouted at him that he had the right to question his employees. He further commented when Postmaster Denafó later questioned him about appellant’s whereabouts, he shouted that appellant was absent without leave because she did not have his permission to leave work. Mr. Smith did not indicate that he witnessed the meeting between appellant and Postmaster Denafó in the latter’s office.

In further support of her allegation, appellant submitted a July 15, 1997 narrative statement of Patricia A. Hughes, a coworker, that Postmaster Denafó summoned appellant into his office on that date and that she remained there for 40 minutes. She stated that appellant emerged from Postmaster Denafó’s office weeping. Ms. Hughes further stated that Postmaster Denafó immediately ordered appellant back into his office and that she emerged crying harder. She noted that appellant was called into Postmaster Denafó’s office three times. Ms. Hughes also noted that she opened the door to the garage where she saw Postmaster Denafó speaking with appellant, but closed the door and continued casing her mail. Ms. Hughes did not indicate that she witnessed the meeting between appellant and Postmaster Denafó in the latter’s office.

Although the employing establishment’s investigation into the July 11, 1997 accident is generally related to appellant’s employment, it relates to administrative functions of the

employer and not to appellant's regular or specially assigned duties.⁶ In this case, the administrative function of the employer is to investigate the motor vehicle accident. Where the evidence demonstrates that the employing establishment neither erred nor acted abusively in the administration of such matters, coverage will not be afforded.⁷ Consequently, a mere reaction to an administrative investigation, without more, is not covered by the Act.⁸ Under the circumstances of this case, appellant has not established that the employing establishment erred or acted abusively in investigating the July 11, 1997 motor vehicle accident. Postmaster Denafó contended that he discussed the reasons for the meeting, which involved appellant's failure to report the July 11, 1997 accident and the employing establishment's policy about reporting such accidents. The statements from appellant's coworkers and relative do not support her allegation of error or abuse as they were not present during the meeting between appellant and Postmaster Denafó.

With regard to appellant's claim of harassment by Postmaster Denafó during the July 15, 1997 meeting and six months prior to that date, the Board has held that unfounded perceptions of harassment do not constitute employment factors.⁹ Postmaster Denafó denied that he harassed appellant during the July 15, 1997 meeting. In an undated narrative statement, Postmaster Denafó denied that appellant was harassed by their meeting on July 15, 1997. He stated that appellant became upset due to her failure to report the July 11, 1997 accident. He then stated: "I had to talk to appellant on July 15, 1997 because her drop days are Sunday and Monday. All carriers were aware of the importance to call in accidents when they happen [and that] appellant failed to do this."

Appellant has not identified specific incidents of the claimed harassment six months prior to the meeting. Rather, she made general allegations of harassment and failed to submit sufficient corroborative evidence. For harassment to give rise to a compensable disability under the Act, there must be some evidence that the harassment did in fact occur. Mere perceptions of harassment or discrimination are not compensable under the Act.¹⁰ Appellant has failed to establish a factual basis for her allegations that her claimed emotional condition was caused by harassment from Postmaster Denafó.

Appellant, nonetheless, has identified and substantiated a compensable factor of employment. The hearing transcript reveals appellant's testimony in response to her counsel's question of whether the accident itself upset her. Appellant testified that the accident was "extremely" upsetting. Appellant also testified that she made a mistake in going up Mr. Martino's driveway and reporting it to him. She then testified that "I was so upset I never

⁶ See *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁷ *Kathleen D. Walker*, 42 ECAB 603 (1991).

⁸ See *Arthur F. Hougens*, 42 ECAB 455 (1991) (where the Board held that investigations into alleged illegal or improper acts are not within an employee's performance of duty); *Chester R. Henderson*, 42 ECAB 352 (1991); *Donna Faye Cardwell*, *supra* note 5.

⁹ See *Kathleen D. Walker*, *supra* note 7; *Ruthie Evans*, 41 ECAB 416 (1990).

¹⁰ *Jack Hopkins, Jr.*, 42 ECAB 818 (1991).

thought.” She further testified that “I went to the door and I was upset there, too.” The July 11, 1997 motor vehicle accident occurred while appellant was involved in her regular work duties, which involved the delivery of mail and is substantiated by the record.

Because appellant has established a compensable factor of employment, the Board will address the medical evidence of record. The record contains medical evidence, which fails to address whether appellant’s emotional condition was caused by the July 11, 1997 motor vehicle accident. Therefore, it is insufficient to establish appellant’s claim.

Dr. Marino’s July 26, 1997 report, which was updated on August 18, 1997 found that appellant’s symptoms started after an argument at work. Dr. Marino also found that appellant was still upset and was not emotionally able to work. Similarly, in his November 19, 1997 and April 10, July 28 and September 11, 1998 medical reports, Dr. John R. Rushton, III, a Board-certified psychiatrist, found that appellant’s emotional condition was caused by the July 15, 1997 incident with her supervisor. Dr. Marino’s and Dr. Rushton’s reports, however, attribute appellant’s emotional condition to an administrative matter, which is not compensable under the Act as discussed above. Therefore, their reports are insufficient to establish appellant’s burden.

Inasmuch as appellant did not submit rationalized medical evidence establishing that her emotional condition was caused by the July 11, 1997 motor vehicle accident, a compensable factor of employment under the Act, the Board finds that appellant has failed to satisfy her burden of proof in this case.

The March 17, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 11, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member